IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23376 of 2005
With
SPECIAL CIVIL APPLICATION No. 23378 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHSANA DIST.CENTRAL CO.OP. BANK LTD.THR' ITS MANAGER - Petitioner(s)
Versus
PATEL KANTIBHAI UMEDBHAI & 3 - Respondent(s)

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Appearance :
MR GIRISH K PATEL for Petitioner(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2007

ORAL JUDGMENT

1. Since factual and legal aspects are identical in

these petitions, they have been heard together and are being disposed of by this common judgement. It would be sufficient to note factual aspects as arising in Special Civil Application No.23376/2005.

2. The petitioner herein is a cooperative bank. The petitioner bank had sanctioned and disbursed loan of sum of Rs.4,25,000/- to respondent no.3 herein. Respondent no.3 executed all security documents in favour of the petitioner bank and also furnished personal guarantees of Patel Khodidas Jethabhai and Patel Devchand Haridas. Respondent no.2 father of the loanee placed suit land as charge with the bank and also filed an affidavit and submitted consent letter for loan granted to his son. Thus the suit land is under the charge of petitioner bank.

3. Since respondent no.2 herein did not repay the outstanding loan amount, the petitioner-bank filed Summary Suit being Lavad Suit No.851/2000 before the Board of Nominees, Mehsana to recover sum of Rs.5,10,035/-. Board of Nominees decreed the suit in favour of the petitioner bank against the principal borrower as well as two guarantors directing them to pay the decreetal sum with interest. District Registrar, Cooperative Societies, Mehsana also issued a recovery certificate in favour of the petitioner-bank. When the recovery proceedings

were in progress, respondent no.1 herein filed a regular civil suit no.71/2004 before the Learned Civil Judge(S.D.) Patan, for seeking partition of the suit property. In the said suit, declaration was prayed that the plaintiff has 1/4th share in the suit property. It was also prayed that suit property be partitioned and possession of 1/4th part thereof be handed over to the plaintiff. A declaration was also prayed to the effect that even if there is any charge of the suit property, 1/4th share of the plaintiff is not liable to satisfy the charge. Prayer was also made not to auction or sale the property in question till partition is made.

4. In the said suit on application exh.5 filed by the plaintiff, trial Court was pleased to grant interim injunction restraining defendant no.1 i.e. respondent no.2 herein from selling, mortgaging, alienating in any manner dealing with the suit property. This order was passed on 21st April, 2004. On the returnable date since respondent no.2 agreed to maintain the status-quo till final disposal of the suit, learned Judge was pleased to confirm the ad interim order by his order dated 24th November, 2004.

5. The petitioner bank claiming vital interest in the litigation approached the Civil Court by filing application exh.19, seeking permission to be joined as party defendant in the said civil

suit. This application however, came to be rejected by impugned order dated 31st August, 2005. In the said order, learned Judge was of the opinion that the suit is filed for partition of the property according to the Hindu law. The bank has no stake in the litigation and that therefore, the bank is not required to be joined as co-defendant.

6. It is this order passed by the learned Principal Senior Civil Judge, Patan that the petitioner bank has challenged in this petition.

7. Similar facts are involved in Special Civil Application No.23378/2005 also, wherein also under identical circumstances, the petitioner bank has challenged an order dated 31st August, 2005 passed by the Principal Senior Civil Judge, Patan in regular civil suit no 84/2004.

8. Having heard learned advocates appearing for the parties, I find that the learned Judge materially erred in rejecting the application of the bank. It may be recalled that the bank already had a decree from the competent Court permitting the bank to recover loan amount with accrued interest from the principal borrower as well as the guarantors. There does not appear to be any dispute that the suit property was offered as security for receiving the loan. Subsequently, when on the strength of the decree

passed by the Board of Nominees, the bank secured recovery certificate and was in the process of executing the decree, that one of the members of the family approached the Civil Court and claimed partition of the suit property claiming that property in question was ancestral property in which he i.e. the plaintiff had an undivided share. Reliefs prayed included partition of the property, declaration that the share of the plaintiff cannot be attached for satisfying the charge created under the suit property. Defendant no.2 i.e. original borrower in response to the summons issued by the Civil Court agreed to maintain status-quo till final disposal of the suit. On that basis interim injunction granted by the Civil Court came to be confirmed.

9. It can thus be seen that prima facie the bank's interest were being jeopardised and the principal borrower insomuch has agreed to maintain status-quo during the pendency of the civil litigation. Direct effect of the injunction granted by the Civil Court and concession made by the principal borrower would be that the bank would be prevented and precluded from executing the decree though recovery certificate was also issued by the authority under the Cooperative Societies Act. Under no circumstances, therefore, can it be envisaged that bank was not a proper, if not a

necessary party to the said litigation.

10. Order 1 Rule 3 of Civil Procedure Code provides for who may be joined as defendants and states inter-alia that all person may be joined in one suit as defendants where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons. Sub-rule 2 of Rule 10 of Order 1 further provides that the Court may at any stage of the proceeding, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

11. It can thus be seen that the Civil Court has wide discretion to order joining of any person as party whose presence would enable the Court to effectually and completely to adjudicate upon and settle all questions involved in the suit. In the present case undoubtedly, the bank was a proper party whose presence would have enabled not only the bank to safeguard its interest but

would enable the Civil Court to properly and effectually adjudicate on the issues arising in the suit. In that view of the matter, trial Court materially erred in not exercising the jurisdiction vested in it. Such refusal to exercise the jurisdiction has resulted into miscarriage of justice against the petitioner bank.

12. Under the circumstances, both orders dated 31st August, 2005, impugned in these petitions are hereby quashed and set aside. The petitioner bank would be joined as defendant in each of the pending civil suits.

13. With these directions, petitions are allowed and disposed of accordingly. Rule is made absolute. No order as to costs.

(Akil Kureshi,J.)

(raghu)